

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Carlos Simmons, #211859,	)	
	)	
Plaintiff,	)	Civil Action No. 6:08-400-GRA-WMC
	)	
vs.	)	<b><u>REPORT OF MAGISTRATE JUDGE</u></b>
	)	
SCDC Lieber CI, et al.,	)	
	)	
Defendants.	)	
_____	)	

The plaintiff, a state prisoner proceeding *pro se*, seeks relief pursuant to Title 42, United States Code, Section 1983. This matter is before the court on motion of the plaintiff for default judgment.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.


The plaintiff moves for default judgment against the defendants for failure to file their answer to the amended complaint by April 13, 2009, as directed by order of this court filed April 6, 2009 (doc. 55). The plaintiff attaches to his motion a service letter addressed to him from defendants' counsel dated April 15, 2009, and states "an answer was not mailed until April 15, 2009 ... This is clear evidence defendants did not answer to Plaintiff by 4/13/09 as ordered."

A review of the docket in this case reveals that the defendants actually filed their answers to the amended complaint on April 13, 2009, as directed (see docs. 61 and

63), but did not mail a copy to the plaintiff until April 15<sup>th</sup>. As the answers were filed by the April 13, 2009, deadline, they were timely filed and the defendants are not in default.

Based on the foregoing, it is recommended that the plaintiff's motion for default judgment (doc. 75) be denied.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'W. M. Catoe', is written over a horizontal line.

WILLIAM M. CATOE  
UNITED STATES MAGISTRATE JUDGE

May 4, 2009

Greenville, South Carolina